

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Aaron Quincy Ingram,

Plaintiff,

v.

Kevin McMahon, et al.,

Defendants.

Case No. 2:24-cv-00069-CDS-DJA

Order

The Court previously recommended denying Plaintiff's application to proceed *in forma pauperis* and denying this case without prejudice because Plaintiff did not timely file a completed financial certificate or pay the filing fee. (ECF No. 9). Plaintiff then moved the Court to reconsider its recommendation, attaching a completed *in forma pauperis* application and the accompanying financial certificate and inmate trust account statement. (ECF No. 11). Because Plaintiff's application is complete, the Court grants Plaintiff's motion for reconsideration (ECF No. 11), withdraws its recommendation (ECF No. 9), grants Plaintiff leave to proceed *in forma pauperis*, denies Plaintiff's prior application to proceed *in forma pauperis* as moot (ECF No. 6), and screens Plaintiff's amended complaint. Because the Court finds that Plaintiff has alleged certain cognizable claims, but that other are not cognizable, the Court dismisses certain of Plaintiff's claims without prejudice and with leave to amend and allows others to proceed.

I. Plaintiff's motion to reconsider.

Under Federal Rule of Civil Procedure 60(b)(1), a court may relieve a party from an order for mistake, inadvertence, surprise, or excusable neglect. District courts have discretion regarding whether to grant a motion for reconsideration under Federal Rule of Civil Procedure 60(b). *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014). Here, Plaintiff has demonstrated excusable neglect because he explains that he was unable to meet the Court's deadline for filing a

1 financial certificate and inmate account statement because he was having difficulties working
2 with Clark County Detention Center officers to obtain the statement and signature. (ECF No. 11).
3 The Court thus grants Plaintiff's motion for reconsideration (ECF No. 11) and withdraws its
4 report and recommendation (ECF No. 9).

5 **II. *In forma pauperis* application.**

6 Plaintiff filed the forms required to proceed *in forma pauperis* (without paying the filing
7 fee). (ECF No. 10). Plaintiff has shown an inability to prepay fees and costs or give security for
8 them. Accordingly, the application to proceed *in forma pauperis* will be granted under 28 U.S.C.
9 § 1915(a). The Court denies Plaintiff's prior application as moot now that he has filed a renewed
10 one. (ECF No. 6). The Court will now screen Plaintiff's complaint.

11 **III. Legal standard for screening.**

12 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
13 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is
14 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks
15 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
16 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend
17 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
18 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
19 F.3d 1103, 1106 (9th Cir. 1995).

20 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
21 complaint for failure to state a claim upon which relief can be granted. Review under Rule
22 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
23 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
24 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
25 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
26 allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the
27 elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*
28 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations

1 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
2 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
3 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the
4 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
5 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
6 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
7 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

8 Federal courts are courts of limited jurisdiction and possess only that power authorized by
9 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
10 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
11 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
12 federal law creates the cause of action or where the vindication of a right under state law
13 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
14 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
15 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
16 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
17 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal
18 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
19 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
20 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
21 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
22 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

23 **IV. Screening Plaintiff’s complaint.**

24 Before the Court screened his complaint, Plaintiff filed an amended complaint. (ECF No.
25 7). The Court will thus screen the amended complaint and not the initial complaint that Plaintiff
26 attached to his original *in forma pauperis* application. This is because, as a general rule, an
27 amended complaint supersedes the original. *See Exeltis USA, Inc. v. First Databank, Inc.*, 779
28 F.App’x 486, 487 (9th Cir. 2019).

1 Plaintiff sues Las Vegas Metropolitan Police Department (“LVMPD”) Chief Sheriff
2 Kevin McMahon; LVMPD Officer A. Cordero; LVMPD Officer Eduardo; Chief District Attorney
3 Steven B. Wolfson; and Deputy District Attorney Megan Thomson. He brings four claims arising
4 out of his arrest on January 26, 2020 and subsequent prosecution. Plaintiff brings each of his
5 claims under the Fourth Amendment.

6 **A. LVMPD Sheriff and District Attorney Wolfson.**

7 As a preliminary matter, Plaintiff’s claims—alleging violations of his constitutional rights
8 against state actors—arises under 42 U.S.C. § 1983. And it appears that Plaintiff has named
9 LVMPD Sheriff McMahon and District Attorney Wolfson on a *respondeat superior* basis,
10 meaning that he has named these two defendants only because they employ or supervise Officers
11 Cordero and Eduardo and Deputy DA Thompson. However, to be liable under § 1983, a
12 defendant must have personally participated in the alleged misconduct. *Taylor v. List*, 880 F.2d
13 1040, 1045 (9th Cir. 1989). There is no *respondeat superior* liability under § 1983. *Id.* Because
14 Plaintiff has not alleged how either Sheriff McMahon or District Attorney Wolfson participated in
15 the constitutional violations he describes, the Court dismisses his claims against them without
16 prejudice.

17 **B. Claim 1.**

18 In Plaintiff’s first cause of action, he alleges that Officers Cordero and Eduardo arrested
19 him without probable cause. He alleges that, on January 26, 2020, Cordero and Eduardo arrived
20 at a Wienerschnitzel restaurant, responding to a report by an individual named Mark Anderson
21 about a reckless driver. Anderson told officers that the suspect threatened him with a firearm
22 during a road rage incident. He further reported that the individual was a Black male adult aged
23 40-50 years, 5 foot 6 inches tall, wearing a black jacket and blue jeans, and was driving a white
24 sedan.

25 Plaintiff alleges that officers later arrested him while he was waiting at a bus stop, despite
26 the fact that he did not match the description Anderson gave. Plaintiff asserts that he was 29
27 years old at the time, 6 feet tall, wearing gray sweatpants and a backpack, and was not anywhere
28

1 near a white sedan. When Anderson showed up at the scene to identify him, Anderson
2 immediately told officers that they had the wrong person.

3 Generally, an arrest made without a warrant requires a showing of probable cause. *See*
4 *Gilker v. Baker*, 576 F.2d 245, 246 (9th Cir. 2011). An arrest made without probable cause or
5 other justification provides the basis for a claim of unlawful arrest under § 1983 as a violation of
6 the Fourth Amendment. *Dubner v. City of San Francisco*, 266 F.3d 959, 964-65 (9th Cir. 2001).
7 A warrantless arrest is reasonable where the officer has probable cause to believe a crime has
8 been or is being committed. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). “If an officer has
9 probable cause to believe that an individual has committed even a very minor criminal offense in
10 his presence, he may, without violating the Fourth Amendment, arrest the offender.” *Atwater v.*
11 *City of Lago Vista*, 532 U.S. 318, 354 (2001). Whether a police officer has probable cause to
12 arrest is ascertained by looking at the facts known to the officer at the time of the arrest. *Turner*
13 *v. County of Washoe*, 759 F.Supp. 630, 634 (D. Nev. 1991). Probable cause exists if the facts and
14 circumstances within the person’s knowledge and based on reasonably trustworthy information
15 are sufficient to warrant a prudent person in believing that the person had committed a crime. *Id.*
16 The existence of probable cause vitiates any claim of unlawful arrest. *Pierson v. Ray*, 386 U.S.
17 547 (1967); *Wyatt v. Cole*, 504 U.S. 158, 165 (1992); *Turner*, 759 F.Supp. at 633-34 (stating “[i]t
18 has long been established that a police officer who arrests with probable cause is immune from
19 suit in a civil rights action”). Whether charges are later dismissed does not affect the
20 determination of whether probable cause existed to support the arrest. *See Beauregard v.*
21 *Wingard*, 362 F.2d 901, 903 (9th Cir. 1996).

22 Plaintiff has alleged a colorable claim for unlawful arrest against Officers Cordero and
23 Eduardo. He has alleged that Officers Cordero and Eduardo did not have probable cause to arrest
24 him because he did not match the description of the person for whom they were looking and
25 because he was simply standing at a bus stop when they arrested him. Based on Plaintiff’s
26 allegations, there was no reason for officers to believe that he had committed a crime. This claim
27 will thus proceed.
28

1 **C. *Claim 2.***

2 In Plaintiff's second cause of action, he alleges that Officers Cordero and Eduardo
3 conducted an unreasonable search and seizure. Plaintiff asserts that, when officers approached
4 him at the bus stop, they did so with their weapons drawn, causing him to fear for his life.
5 Officers then apprehended Plaintiff and searched his person and seized his backpack. Officers
6 then placed Plaintiff in the back of their car for hours.

7 The Fourth Amendment protects the "right of the people to be secure in their persons,
8 houses, papers, and effects, against unreasonable searches and seizures," and requires that a
9 warrant sanctioning a search or seizure be supported by probable cause. *See* U.S. Const. Amend.
10 4. Plaintiff alleges that officers detained and searched him without probable cause because he did
11 not match the description of the person Anderson reported and was simply standing at a bus stop.
12 Plaintiff has alleged a colorable claim for unreasonable search and seizure in violation of the
13 Fourth Amendment against Officers Cordero and Eduardo.

14 **D. *Claim 3.***

15 In Plaintiff's third cause of action, he alleges that Officers Cordero and Eduardo
16 effectuated a false arrest. He asserts that the officers charged him with carrying a concealed
17 firearm or other deadly weapon, ownership or possession of a firearm by a prohibited person, and
18 possession of stolen property. Officers then transported Plaintiff to Clark County Detention
19 Center, after which Plaintiff was released. On September 23, 2020, during a court hearing,
20 Plaintiff requested that officers preserve body camera footage. But officers destroyed it. Plaintiff
21 alleges that, at the preliminary hearing on February 28, 2022, Officer Cordero testified that he
22 never observed Plaintiff with a firearm or did not collect one from Plaintiff's person. Officer
23 Cordero testified that it was his partner, Eduardo who collected a firearm from the bus stop
24 receptacle "without CSI being present."¹ Plaintiff went to trial on January 9, 2023 and the jury

25
26 ¹ Plaintiff does not allege any causes of action regarding his factual allegations that officers
27 destroyed body camera footage or that Eduardo wrongfully removed a firearm without a crime
28 scene investigator present. The Court thus construes these facts as supporting Plaintiff's unlawful
arrest claim and not as supporting separate causes of action.

1 found him not guilty on January 12, 2023. Here, the Court finds that Plaintiff's third claim is
2 identical to his first claim because they both allege unlawful arrest. So, the Court dismisses this
3 claim without prejudice as moot.

4 ***E. Claim 4.***

5 In Plaintiff's fourth cause of action, he alleges that he was maliciously prosecuted by
6 Deputy DA Megan Thomson after he was falsely arrested on January 26, 2020. Plaintiff alleges
7 that DA Thomson proceeded to prosecute him for criminal charges of carrying a concealed
8 weapon without a permit, owning or possessing a firearm by a prohibited person, and possession
9 of stolen property. But at trial, the jury found Plaintiff not guilty.

10 A claim for malicious prosecution or abuse of process is not generally cognizable under
11 Section 1983 if a process is available within the state judicial system to provide a remedy. *Usher*
12 *v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987) (citations omitted). The exception is
13 "when a malicious prosecution is conducted with the intent to deprive a person of equal
14 protection of the laws or is otherwise intended to subject a person to denial of constitutional
15 rights." *Id.* at 562. (citations omitted). In order to prevail on a Section 1983 claim of malicious
16 prosecution, a plaintiff "must show that the defendants prosecuted [him] with malice and without
17 probable cause, and that they did so for the purpose of denying [him] equal protection or another
18 specific constitutional right." *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995)
19 (citations omitted); *see also Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004);
20 *Lacey v. Maricopa County*, 693 F.3d 896, 919 (9th Cir. 2012). A malicious prosecution claim
21 may be brought against prosecutors or against the individuals who wrongfully caused the
22 prosecution. *Smith v. Almada*, 640 F.3d 931, 938 (9th Cir. 2011). Probable cause is an absolute
23 defense to malicious prosecution. *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1054-55 (9th
24 Cir. 2009). In order to state a malicious prosecution claim, Plaintiff must show that the prior
25 proceeding was commenced by or at the direction of a defendant and it was: (1) pursued to a legal
26 termination favorable to plaintiff; (2) brought without probable cause; and (3) initiated with
27 malice. *Ayala v. Environmental Health*, 426 F.Supp.2d 1070, 1083 (E.D. Cal. 2006). For the
28 termination to be considered "favorable" to the malicious prosecution plaintiff, it must be

1 reflective of the merits of the action and of the plaintiff's innocence of the charges. *Villa v. Cole*,
2 4 Cal.App.4th 1327, 1335 (1992); *Awabdy*, 368 F.3d at 1068 (“[a]n individual seeking to bring a
3 malicious prosecution claim must generally establish that the prior proceedings terminated in
4 such a manner as to indicate his innocence.”).

5 Here, Plaintiff has not alleged a colorable claim for malicious prosecution because he has
6 alleged that he underwent a preliminary hearing regarding the charges DA Thomson brought and
7 then proceeded to trial on those charges. Plaintiff's criminal case would not have proceeded to
8 trial if a neutral magistrate judge did not find that there was probable cause at the preliminary
9 hearing. *See Nev. Rev. Stat.* 171.206. Plaintiff also does not allege that DA Thomson acted
10 maliciously. Without that allegation and given the fact that Plaintiff alleges elsewhere that he
11 engaged in, and proceeded past, a preliminary hearing, the Court cannot find that DA Thomson
12 acted maliciously in bringing the charges she did against Plaintiff. Finally, just because Plaintiff
13 alleges that the jury found him not guilty of the charges does not establish that the prior
14 proceedings terminated in such a manner as to indicate Plaintiff's innocence. This is because the
15 standard for convicting a person on criminal charges is extremely high—beyond a reasonable
16 doubt. *See Nev. Rev. Stat.* 175.201. And just because a jury cannot find beyond a reasonable
17 doubt that a person committed the crime charged does not necessarily mean that the individual
18 was actually innocent. The Court thus dismisses this claim without prejudice and with leave to
19 amend.

20
21 **IT IS THEREFORE ORDERED** that Plaintiff's motion for reconsideration (ECF No.
22 11) is **granted**.

23 **IT IS FURTHER ORDERED** that the Court's report and recommendation (ECF No. 9)
24 is **withdrawn**.

25 **IT IS FURTHER ORDERED** that Plaintiff's application to proceed *in forma pauperis* is
26 **granted**. Plaintiff will **not** be required to pay an initial installment fee. Nevertheless, the full
27 filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation
28

1 Reform Act. The movant herein is permitted to maintain this action to conclusion without the
2 necessity of prepayment of fees or costs or the giving of security therefor.

3 **IT IS FURTHER ORDERED** that Plaintiff's previous application to proceed *in forma*
4 *pauperis* (ECF No. 6) is **denied as moot**.

5 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
6 Prison Litigation Reform Act, the Clark County Detention Center will forward payments from the
7 account of **Aaron Q. Ingram, Inmate No. 7763653**, to the Clerk of the United States District
8 Court, District of Nevada, 20% of the preceding month's deposits (in months that the account
9 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of Court is
10 kindly directed to send a copy of this order to the Finance Division of the Clerk's Office. The
11 Clerk of Court is also kindly directed to send a copy of this order to the attention of **Chief of**
12 **Inmate Services for the Clark County Detention Center** at Clark County Detention Center,
13 330 S. Casino Center Blvd., Las Vegas, NV 89101.

14 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
15 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the
16 Prison Litigation Reform Act.

17 **IT IS FURTHER ORDERED** that the following claims alleged in Plaintiff's amended
18 complaint (ECF No. 7) shall proceed:

- 19
 - Unlawful arrest in violation of the Fourth Amendment against Officer A. Cordero and
 - 20 Officer Eduardo.
 - 21 • Unreasonable search and seizure in violation of the Fourth Amendment against Officer
 - 22 A. Cordero and Officer Eduardo.

23 **IT IS FURTHER ORDERED** that the following claims are dismissed without prejudice:

- 24
 - Plaintiff's malicious prosecution claim against Deputy DA Megan Thomson.
 - 25 • Plaintiff's duplicative unlawful arrest claim.
 - 26 • Plaintiff's claims against Sheriff Kevin McMahon and District Attorney Steven B.
 - 27 Wolfson.

1 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to issue
2 summonses for: (1) Officer A. Cordero #17268; and (2) Officer Eduardo.

3 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to deliver the
4 two summonses, two copies of the complaint (ECF No. 7), and two copies of this order to the
5 United States Marshals Service (“USMS”) for service.


6 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send Plaintiff
7 two blank copies of the Form USM-285.

8 **IT IS FURTHER ORDERED** that Plaintiff must complete one Form USM-285 for each
9 defendant proceeding in this case—Officer Cordero and Officer Eduardo—and will have until
10 **July 19, 2024** to send his completed Forms USM-285 to the USMS for service.

11 **IT IS FURTHER ORDERED** that, within twenty-one days after receiving a copy of the
12 Forms USM-285 back from the USMS showing whether service has been accomplished, Plaintiff
13 must file a notice with the Court identifying whether the defendants were served. If Plaintiff
14 wishes to have service again attempted on an unserved defendant, Plaintiff must file a motion
15 with the Court identifying the defendant and specifying a more detailed name and/or address for
16 that defendant or whether some other manner of service should be attempted.

17 **IT IS FURTHER ORDERED** that Plaintiff shall have until **September 26, 2024**, to
18 complete service. Fed. R. Civ. P. 4(m).

19
20 DATED: June 28, 2024

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23 _____
24 DANIEL J. ALBREGTS
25 UNITED STATES MAGISTRATE JUDGE
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